

Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP §808.01(a). Applicants respectfully traverse the Election of Species Requirement on the grounds that the Office has not provided any reasons or examples to support a conclusion that the species are indeed patentably distinct. Accordingly, Applicants respectfully submit that the restriction is improper, and Applicants' election of species is for examination purposes only.

Finally, with respect to the elected species, Applicants respectfully submit that, should the elected species be found allowable, the Office should expand its search to the non-elected species.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the Election of Species Requirement. Withdrawal of the Election of Species Requirement is respectfully requested.

To the extent that the Office considers the designation of species 1 and 2 to be a Restriction Requirement, Applicants respectfully traverse the same. The Office has characterized the Groups I and II as related mutually exclusive species in an intermediate-final product relationship. Citing MPEP §806.05(j), the Office concludes that the “intermediate product is deemed to be useful as forming a lightly doped substrate and the inventions are deemed patentably distinct because there is nothing on this record to show them to be obvious variants.” However, the Office has not provided reasons and/or examples to support this conclusion. Accordingly, Applicants respectfully submit that the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement. Withdrawal of the Restriction Requirement is respectfully requested.

Moreover, the MPEP in §803 states as follows:

“If the search and examination of an entire application can be made without a serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.”

Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Vincent K. Shier, Ph.D.
Registration No. 50,552

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/03)